

**ORIGINAL**

Alan F. McCormick  
GARLINGTON, LOHN & ROBINSON, PLLP  
199 West Pine • P.O. Box 7909  
Missoula, MT 59807-7909  
Telephone (406) 523-2500  
Telefax (406) 523-2595  
afmccormick@garlington.com

Attorneys for Appellees

**FILED**

NOV 12 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 09-0322

PLAINS GRAINS LIMITED  
PARTNERSHIP, a Montana limited  
partnership; PLAINS GRAINS, INC., a  
Montana corporation; ROBERT E.  
LASSILA and EARLYNE A. LASSILA;  
KEVIN D. LASSILA and STEFFANI J.  
LASSILA; KERRY ANN (LASSILA)  
FRASER; DARYL E. LASSILA and  
LINDA K. LASSILA; DOROTHY  
LASSILA; DAN LASSILA; NANCY  
LASSILA BIRTWISLE; CHRISTOPHER  
LASSILA; JOSEPH W. KANTOLA and  
MYRNA R. KANTOLA; KENT HOLTZ;  
HOLTZ FARMS, INC., a Montana  
corporation; MEADOWLARK FARMS, a  
Montana partnership; JON C.  
KANTOROWICZ and CHARLOTTE  
KANTOROWICZ; JAMES FELDMAN and  
COURTNEY FELDMAN; DAVID P.  
ROEHM and CLAIRE M. ROEHM;  
DENNIS N. WARD and LaLONNIE  
WARD; JANNY KINION-MAY; C LAZY J  
RANCH; CHARLES BUMGARNER and  
KARLA BUMGARNER; CARL W.  
MEHMKE and MARTHA MEHMKE;  
WALTER MEHMKE and ROBIN

**APPELLEES' NOTICE OF  
SUPPLEMENTAL  
AUTHORITY**

MEHMKE; LOUISIANA LAND &  
LIVESTOCK, LLC, a limited liability  
corporation; GWIN FAMILY TRUST, U/A  
DATED SEPTEMBER 20, 1991; FORDER  
LAND & CATTLE CO.; WAYNE W.  
FORDER and DOROTHY FORDER;  
CONN FORDER and JEANINE FORDER;  
ROBERT E. VIHINEN and PENNIE  
VIHINEN; VIOLET VIHINEN; ROBERT  
E. VIHINEN, TRUSTEE OF ELMER  
VIHINEN TRUST; JAYBE D. FLOYD and  
MICHAEL E. LUCKETT, TRUSTEES OF  
THE JAYBE D. FLOYD LIVING TRUST;  
ROBERT M. COLEMAN and HELEN A.  
COLEMAN; GARY OWEN and KAY  
OWEN; RICHARD W. DOHRMAN and  
ADELE B. DOHRMAN; CHARLES  
CHRISTENSEN and YULIYA  
CHRISTENSEN; WALKER S. SMITH, JR.  
and TAMMIE LYNNE SMITH; JEROME  
R. THILL; AND MONTANA  
ENVIRONMENTAL INFORMATION  
CENTER, a Montana nonprofit public  
benefit corporation

Appellants,

v.

BOARD OF COUNTY COMMISSIONERS  
OF CASCADE COUNTY, the governing  
body of the County of Cascade, acting by  
and through Peggy S. Beltrone, Lance Olson  
and Joe Briggs,

Appellees,

and

SOUTHERN MONTANA ELECTRIC

GENERATION and TRANSMISSION  
COOPERATIVE, INC.; the ESTATE OF  
DUANE L. URQUHART; MARY  
URQUHART; SCOTT URQUHART; and  
LINDA URQUHART,

Appellees/Cross-Appellants.

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Pursuant to Montana Rule Appellate Procedure 12(6), Defendant Board of County Commissioners of Cascade County files this Notice of Supplemental Authority. Rule 12(6) requires a party to promptly advise the Clerk of the Supreme Court via a Notice of Supplemental Authority of pertinent and significant authorities which come to the attention of a party after the party's brief has been filed, but before a decision has been issued. The Notice is required to reference the page of the brief to which the citation pertains and be provided without argument.

While preparing for oral argument in this matter, counsel learned late last week that the Cascade County Commissioners adopted new zoning regulations and a new zoning map for the County which took effect August 25, 2009. The 18-month long public process created five new zoning classifications, eliminated two zoning classifications and resulted in changes to the zoning map. Thus, the zoning regulations in effect at the time of the district court decision dated November 28, 2008, have been replaced by the version taking effect on August 25, 2009. The zoning designation and the permissible land use for the parcels at issue in this matter remained the same (I-2 Industrial as limited by the condition of approval).

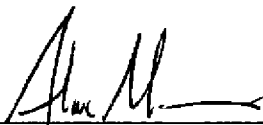
This Notice pertains generally to all relevant issues in this case and there is no particular page of the briefing to which the citation pertains.

Counsel recognizes that the information presented here may not be a supplemental authority in the traditional sense as contemplated by the rule. It is nevertheless a new regulation enacted by the County Commissioners which may or may not have a bearing on the case. Counsel, in an abundance of caution, determined it best to notify the Court of this new authority and allow the Court to take judicial notice of it.

DATED this 10th day of November, 2009.

Attorneys for Appellees Board of County  
Commissioners of Cascade County:

GARLINGTON, LOHN & ROBINSON, PLLP  
199 West Pine • P. O. Box 7909  
Missoula, MT 59807-7909  
Telephone (406) 523-2500  
Telefax (406) 523-2595

By 

Alan F. McCormick

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## CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing *Appellees' Notice of Supplemental Authority* by depositing said copies into the U.S. mail, postage prepaid, addressed to the following and fax filing on November 10, 2009 at 4:20 p.m.:

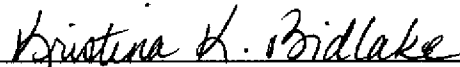
Brian Hopkins - (406) 454-6949  
Deputy Cascade County Attorney  
121 4th Street North  
Great Falls, MT 59401  
Attorneys for Appellees

Elizabeth A. Best - (406) 452-9920  
Best Law Offices, P.C.  
P. O. Box 2114  
Great Falls, MT 59403-2114  
Attorneys for Appellants

Roger M. Sullivan - (406) 752-7124  
John F. Lacey  
McGarvey, Heberling, Sullivan  
& McGarvey, P.C.  
745 South Main  
Kalispell, MT 59901  
Attorneys for Appellants

Gary M. Zadick - (406) 452-9360  
Mary K. Jaraczski  
Ugrin, Alexander, Zadick  
& Higgins, P.C.  
P. O. Box 1746  
Great Falls, MT 59403-1746  
Attorneys for Intervenors and  
Appellees

DATED this 10<sup>th</sup> day of November, 2009.

  
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Kristina K. Bidlake